

CARL A. PETERSON

IBLA 83-485

Decided June 10, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer, M 55977.

Affirmed.

1. Evidence: Presumptions -- Oil and Gas Leases: Rentals

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, a statement that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish a tender of rental where there is no evidence of receipt of the payment in the file.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

APPEARANCES: Carl A. Peterson, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Carl A. Peterson appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer, M 55977, for failure to submit timely the first year's advance rental payment.

In a notice dated January 5, 1983, BLM notified appellant that his simultaneously filed oil and gas lease application for parcel MT 28 of the July 1982 drawing was selected with first priority for lease offer M 55977. Appellant was instructed: "(1) The first year's rental payment in the amount specified below must be paid by you and must be received in this office within 30 days from receipt of this notice." (Emphasis in original.) Appellant received the notice and the lease offer forms by certified mail delivery on January 10, 1983. The rental payment and lease offer forms were required to be filed with BLM on or before February 9, 1983. Appellant's offer to lease was filed on January 13, 1983, but it was recorded that the rental payment was not enclosed. Appellant tendered payment to BLM in a letter dated February 15, 1983, which was received by BLM on February 18, 1983. However, in a decision dated February 17, 1983, BLM had rejected appellant's offer for failure to submit timely the advance rental payment. His late payment was not accepted by BLM because the rights of the second-drawn applicant had intervened.

In his statement of reasons, appellant states, "I do not know why the check was not received in the Montana State Office. It has not surfaced elsewhere." Appellant requests the Board to "consider the possibility that the original check was lost in the BLM office."

[1] The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). However, a statement that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the payment in the file. R. E. Frasch, 69 IBLA 66 (1982).

A BLM employee had made a memorandum that appellant's offer forms were received without accompanying rental payment. That memorandum is dated January 13, 1983; the day the envelope was received. Appellant has offered no evidence in support of his belief that the check was received by BLM and lost there. Without a presentation of contrary evidence, appellant has failed to rebut the legal presumption raised by the circumstances that his check was not tendered.

[2] The requirement is clear that an appellant must file advance rental payment for the first year with BLM within 30 days of receipt of notice to do so. 43 CFR 3112.4-1(a). Appellant failed to do so, and BLM properly rejected his offer. 43 CFR 3112.6-1(d). BLM has no discretion to accept the late remittance, regardless of the reasons for the delay, because the rights of the second- and third-qualified applicants have intervened. Jerry W. Wolf, 70 IBLA 131 (1983). See Beverly J. MacDowell, 71 IBLA 23 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Will A. Irwin
Administrative Judge

